

S.B.CRIMINAL MISC. PETITION NO.1556/2006
(Gopi Ram Vs. State of Raj. & Anr.)

Date of order : : 12.04.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.S.D.Goswami, for the petitioner.
Mr.Ashok Upadhyay, PP for the State.
Mr.Harish Purohit, for the complainant-respondent No.2.

Heard learned counsel for the petitioner as well as learned Public Prosecutor for the State assisted by learned counsel for the complainant-respondent.

The main contention of learned counsel for the petitioner is that although the case under Sections 452 and 323 IPC has been registered against the petitioner but the police after thorough investigation submitted Final Report. Thereafter, the complainant filed a protest petition against the said FR. The learned Magistrate only after recording the statements of complainant Bhagwan under Section 200 Cr.P.C and under Section 202 of Jagdish, took cognizance against the petitioner for offence under Sections 452 and 323 IPC vide its order dated

9.1.2006. Subsequently, the petitioner challenged the cognizance order before the learned Additional Sessions Judge, Bhadra, District Hanumangarh who has dismissed the revision petition filed by the petitioner vide order dated 9.6.2006.

It is contended by learned counsel for the petitioner that learned Magistrate has nowhere given any finding as to why he is not agreeing with the grounds of FR. Learned Magistrate has not at all seen the evidence collected during the investigation. Learned counsel further contends that Bhagwan has stated that he was beaten by the accused with lathi but now he is complaining that only throat was caught. This witnesses has not given any statement regarding beating under Section 200 Cr.P.C. The statement of this witness has not been corroborated with the statements of other witnesses. Learned Magistrate has not discussed the Final Report as required by law and learned revisional court has also not considered the matter in true perspective, therefore, the impugned orders deserves to be interfered with.

On the other hand, learned Public Prosecutor and

learned counsel for the complainant have supported the orders impugned and argues that learned Magistrate after perusing the FR, case-diary, protest petition and statements of the complainant and his witnesses, has taken cognizance against the petitioner for offence under Section 452 and 323 IPC and at that stage, deep appreciation of evidence is not required by the learned Magistrate. He has prima facie found the case under Section 452 and 323 IPC against the petitioner, therefore, he has rightly taken the cognizance against the petitioners for the aforesaid offenses which does not require any interference by this Court.

I have considered the rival arguments advanced by learned counsel for the parties and also gone through the order of learned Magistrate as well as revisional court. From perusal of the orders impugned, it appears that none of the court has tried to look into the grounds of the FR as also the evidence recorded during investigation. The Investigating Officer has recorded the statements of Bhagta Ram, Krishan Kumar, Shera Ram, Jagdish, Gopi Ram etc. Although the statement of Jagdish was recorded under Section 202 Cr.P.C. but his statement under Section 161 Cr.P.C. has not been looked into. Learned Magistrate has not

given any reason why he is not agreeing with the report given by the Investigating Officer. There was no injury, however, learned Magistrate has taken cognizance against the petitioner only on the basis of statements under Section 200 and 202 Cr.P.C. Learned Sessions has also in cursory manner dismissed the revision petition filed by the petitioner. Looking to all the facts and circumstances of the case, since learned Magistrate has not considered the evidence nor enquired the matter in true perspective, therefore, in my considered opinion, the matter requires further enquiry by the learned Magistrate.

Accordingly, this misc. petition is allowed and the orders of both the courts below dated 9.1.2006 and 9.6.2006 are quashed and set aside. This matter is remanded back to the learned trial court with a direction that learned Magistrate shall further enquire the matter and after hearing both the parties and considering the grounds of FR as well as evidence collected during investigation, pass afresh order in accordance with the law.

Learned counsel for the complainant states that complainant may be given liberty to produce fresh evidence. At

this stage, I am not inclined to pass any order in this regard. However, it is left open to the learned Magistrate how he enquire the matter further.

With the aforesaid observations, this misc. petition is disposed of.

(KRISHAN KUMAR ACHARYA), J.

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